Uthayakumar a/l Ponnusamy v Menteri Keselamatan Dalam Negeri, Malaysia & Anor

HIGH COURT (KUALA LUMPUR) — CRIMINAL APPLICATION NO J1–44–20 OF 2008
SURAYA OTHMAN J
17 SEPTEMBER 2008

Criminal Procedure — Habeas corpus — Invalid grounds for — Detention of applicant ruled legal, lawful, and/or proper — Argument that legal detention of applicant rendered unlawful due to subsequent inhumane conditions of applicant's detention — Whether such ground a valid ground for habeas corpus in Malaysia — Whether such ground established by applicant

Preventive Detention — Detention — Application for habeas corpus — Grounds for — Argument that applicant's detention unlawful due to subsequent inhumane conditions of applicant's detention — Whether such argument a valid ground for habeas corpus

The applicant was detained under the Internal Security Act 1960 on 13 December 2007 and held at the Kamunting Detention Centre ('Kamunting Camp'). His first attempt to secure his release under a writ of habeas corpus was rendered futile by the High Court which held his detention lawful. His subsequent appeals to the appellate courts were also unsuccessful. On 22 May 2008, the applicant again filed for a writ of habeas corpus, but on different grounds. In essence, the applicant claimed the following: (i) he was denied his diabetic medication by the Kamunting Camp officials; (ii) he was denied proper medical treatment by the Kamunting Camp and Taiping Hospital officials, which led to his worsened health; and (iii) he was refused a diabetic diet by the Kamunting Camp and Taiping Hospital officials. At the hearing of the application, applicant's counsel invited the High Court to adopt the Canadian legal position that allowed habeas corpus to free a detainee from legal detention when conditions of detention had become inhumane and unlawful. Counsel did not challenge the applicant's initial detention but rather argued that his legal detention had been rendered unlawful due to the subsequent inhumane conditions of detention. The senior federal counsel ('SFC') raised a preliminary objection on the basis that the deprivation or otherwise of any medical treatment or proper diet had no nexus with the legality of the applicant's detention.

Held, dismissing the applicant's application:

(1) Under s 365 of the Criminal Procedure Code and art 5 of the Federal Constitution, the court can only release a person from detention if his detention is 'illegal or improper' or 'unlawful'. Once his detention is considered legal, lawful or proper, habeas corpus is not available to a detainee on whatever grounds advanced by him. In such cases, the court cannot interfere and issue a writ of habeas corpus to free the detainee. The Malaysian position on habeas corpus is confined only to challenging the legal status of the detention. The Canadian position is not applicable in Malaysia. In the instant case, the initial detention of the applicant was held to be legal by the High Court, which decision was upheld by both the Court of Appeal and the Federal Court. Habeas corpus was therefore not available to the applicant who complained of the conditions of detention such as the alleged denial of proper medication and diet. The preliminary objection raised by the SFC ought therefore be allowed (see paras 15, 21–23).

(2) Notwithstanding the High Court's decision on the preliminary objection, the court was inclined to determine the merits of the application. The claim by the applicant that he was denied his diabetic medication was without merit. The evidence very clearly indicated that the applicant was indeed prescribed his diabetic medication, although in generic form, by the various doctors who attended to him. This medication was also collected by the camp officials and kept in the applicant's safe box to be given to him, on his request (see paras 25 & 61).

(3) The applicant's complaint that he was denied proper medical treatment by the Kamunting Camp and Taiping Hospital officials was also baseless since the evidence showed otherwise. The claim by the applicant that he was deprived of a proper diabetic diet by the Kamunting Camp and Taiping Hospital officials was not true and without merits whatsoever. The applicant was referred to a dietician but refused to meet her. The dietician nevertheless prescribed a diabetic diet for the applicant and the food prepared for the applicant in Kamunting was a diet consistent with that of a diabetic diet (see paras 82, 84, 86 & 94).

[Bahasa Malaysia summary

Pemohon telah ditahan di bawah Akta Keselamatan Dalam Negeri 1960 pada 13 Disember 2007 dan ditahan di Pusat Tahanan Kamunting ('Kem Kamunting'). Percubaan pertamanya untuk menjamin pembebasannya di bawah writ habeas corpus telah dianggap sia-sia oleh Mahkamah Tinggi yang memutuskan tahanannya sah dari segi udang-undang. Rayuan selanjutnya ke mahkamah rayuan juga gagal. Pada 22 Mei 2008, pemohon

telah memfailkan semula writ habeas corpus, tetapi kerana alasan berbeza. Pada dasarnya, pemohon mendakwa seperti berikut: (i) dia tidak diberikan perubatan diabetesnya oleh petugas Kem Kamunting; (ii) dia tidak diberikan perubatan sewajarnya oleh Kem Kamunting dan pegawai Hospital Taiping, yang menjadikan kesihatannya bertambah buruk; dan (iii) dia enggan mengikut diet diabetes oleh petugas Kem Kamunting dan Hospital Taiping. Semasa pendengaran permohonan tersebut, peguam pemohon memohon Mahkamah Tinggi menyerapkan kedudukan undang-undang Kanada yang membenarkan habeas corpus untuk membebaskan orang tahanan daripada tahanan sah jika tahanan itu tidak berperikemanusiaan dan menyalahi undang-undang. Peguam tidak mencabar tahanan awal pemohon tetapi berhujah bahawa tahanannya di sisi undang-undang telah menjadi tidak sah akibat keadaan tidak berperimanusiaan tahanan itu. Peguam kanan persekutuan ('PKP') telah membangkitkan bantahan awal bahawa kilanan atau sebaliknya apa-apa rawatan perubatan atau diet betul tiada neksus dengan kesahan tahanan pemohon.

Diputuskan, menolak permohonan pemohon:

(1) Di bawah s 365 Kanun Prosedur Jenayah dan perkara 5 Perlembagaan Persekutuan, mahkamah hanya boleh membebaskan seseorang daripada tahanan jika tahanannya 'illegal or improper' atau 'unlawful'. Jika tahanannya dianggap sah, tidak menyalahi undang-undang atau wajar, habeas corpus tidak diberikan kepada orang tahanan untuk apa alasan yang dikemukakan olehnya. Dalam kes sebegini, mahkamah tidak boleh campur tangan dan mengeluarkan writ habeas corpus untuk membebaskan orang tahanan. Kedudukan Malaysia tentang habeas corpus terhad hanya kepada mencabar status tahanan. Kedudukan Kanada tidak terpakai di Malaysia. Dalam kes ini, tahanan awal pemohon diputuskan sah oleh Mahkamah Tinggi, yang keputusannya dikekalkan oleh kedua-dua Mahkamah Rayuan dan Mahkamah Persekutuan. Habaes corpus oleh itu tidak diberikan kepada pemohon yang mengadu tentang keadaan tahanan seperti penafian perubatan dan diet sewajarnya yang dikatakan itu. Bantahan awal yang telah dibangkitkan oleh PKP oleh yang demikian patut dibenarkan (lihat perenggan 15, 21–23).

(2) Meskipun terdapat keputusan Mahkamah Tinggi berhubung bantahan awal itu, mahkamah cenderung untuk menentukan merit permohonan itu. Dakwaan oleh pemohon bahawa dia tidak diberikan perubatan diabetes adalah tanpa merit. Keterangan jelas menunjukkan bahawa pemohon sememangnya telah ditetapkan perubatan diabetesnya, meskipun dalam bentuk generik, oleh pelbagai doktor yang merawatnya. Perubatan ini juga diambil oleh petugas kem itu dan

disimpan dalam peti simpanan pemohon untuk diberikan kepadanya atas permintaannya (lihat perenggan 25 & 61).

(3) Aduan pemohon bahawa dia tidak diberikan rawatan perubatan sewajarnya oleh petugas Kem Kamunting dan Hospital Taiping juga tidak berasas memandangkan keterangan menunjukkan sebaliknya. Dakwaan oleh pemohon bahawa dia tidak diberikan diet diabetes yang sepatutnya oleh petugas Kem Kamunting dan Hospital Taiping tidak benar dan sama sekali tanpa merit. Pemohon dirujuk kepada pakar diet tetapi telah enggan berjumpanya. Pakar diet itu walau bagaimanapun telah menetapkan diet diabetes untuk pemohon dan makanan yang disediakan untuk pemohon di Kamunting adalah diet yang konsisten dengan diet diabetes (lihat perenggan 82, 84, 86 & 94).]

Notes

For cases on application for habeas corpus, see 10 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1306–1307.

For cases on invalid ground for habeas corpus, see 5(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 2061–2073.

Cases referred to

Kerajaan Malaysia & Ors v Nasharuddin Nasir [2004] 1 CLJ 81, FC (refd)

Lee Kew Sang v Timbalan Menteri Dalam Negeri, Malaysia & Ors [2005] 3 CLJ 914, FC (refd)

Mohamad Ezam bin Mohd Noor v Ketua Polis Negara and other appeals [2002] 4 MLJ 449, FC (refd)

Sejahratul Dursina @ Chomel bte Abdullah v Kerajaan Malaysia & Ors [2006] 1 MLJ 405, FC (refd)

Legislation referred to

Criminal Procedure Code s 365

Federal Constitution arts 5(1), 5(2), 5(3), 149

Internal Security Act 1960

Chew Swee Yoke (N Surendran with her) (Edwin Lim & Suren) for the applicant.

Abdul Wahab bin Mohamad (Othman bin Yusof with him) (Senior Federal Counsel, Home Ministry) for the respondents.

Chan Weng Keng (Maria Soosai Raj a/l Joseph Thamby Raj with him) watching brief on behalf of the Bar Council Malaysia.

Suraya Othman J:

[1] This is an application by Mr Uthayakumar a/l Ponnusamy ('applicant') for the issue of a writ of habeas corpus pursuant to s 365 of the Criminal

Procedure Code ('CPC'). The application was filed by way of notice of motion on 22 May 2008, praying for the following orders:

(i) the applicant to be set at liberty (released); or

(ii) in the alternative, the applicant to be set at liberty from the state where he is being restricted or being denied from receiving proper medical treatment for diabetes and to receive treatment at the Institute Jantung Negara ('IJN') for his heart ailment; and

(iii) other orders the court deemed fit and proper.

THE FACTS

[2] Mr Uthayakumar was detained with three others in Kamunting Detention Camp ('Kamunting Camp') under the Internal Security Act 1960 ('ISA') on 13 December 2007 and is still currently being detained there. He and three others filed writs of habeas corpus in the Criminal Division, High Court (5) in Kuala Lumpur, No 44–(87–90) of 2007 challenging the validity of their detention under the ISA. The said High Court dismissed these cases and held the detention to be lawful. Mr Uthayakumar appealed to the Court of Appeal and later to the Federal Court and both these courts dismissed the appeal and affirmed and upheld the decision of the said High Court. On 22 May 2008, Mr Uthayakumar once again filed for the issue of a writ of habeas corpus based on the above prayers.

THE GROUNDS FOR THE APPLICATION

[3] From Mr Uthayakumar's affidavit supporting this application (encl 4), the followings are averred. Mr Uthayakumar suffered from diabetes millitus since 1996 and has to have a strict diet of sugar free meals (diabetic diet) and medication, to be taken daily (glucophage 500mg) three times daily and diamicron 80mg twice daily. He stated that his sugar level was under control from the date of his detention, 13 December 2007 till mid February 2008 since he has obtained the diabetic medication supplied by his family through the Kamunting Camp officials.

[4] In January 2008, he went on a hunger strike in protest of his detention and was admitted to Taiping General Hospital for abdominal pain. There, he was prescribed by the doctors, diabetic medication which was collected by the Kamunting Camp officials but not given to him. Since he still has his own medication which was formerly supplied by his family, he continued taking them until mid February 2008 when he ran out of supply. He alleged that from mid February till 10 April 2008, he was not given any diabetic medication by the Kamunting Camp officials which led to him having high blood sugar.

[5] He also alleged that the diet in Kamunting which consist of rice and curry is sweet in nature and has aggravated his diabetic condition. Due to the denial of his diabetic medication and diabetic diet, he suffered the followings:

(a) frequent thirst, urination and tiredness — high blood sugar;

(b) headaches, dizziness and weakness;

(c) high blood pressure;

(d) skin disease and ring worm; and

(e) eye blurring.

[6] On 7 April 2008, he was again admitted to Taiping General Hospital and on being discharged on 9 April 2008 he alleged that apart from the previous ailments he suffered before, he also suffers from minimal damage to his heart.

[7] On 28 April 2008, he saw Dr Leong Hui Shan, a consultant doctor in Taiping General Hospital who recommended that he be admitted to IJN to treat the damage to his heart. He made his request to the Kamunting Camp director, Yasuhimi bin Yusoff, who acceded to his request via a letter dated 7 May 2008 with certain conditions attached (encl 4, exh UP-1 at p 47). Mr Uthayakumar through his solicitors, Mr Karpal Singh and later through Messrs Edwin Lim & Suren agreed to be admitted to IJN on 9 May 2008 via their letters dated 8 May 2008 with certain request attached (encl 4 exh UP-1 pp 48–50). To date he is still waiting to be admitted to IJN. Therefore he states that in order that his health condition can be diagnosed and the necessary medical measures and procedures be taken to redress the adverse effects on his health, he requires to be admitted immediately to IJN and that a diabetic specialist of his choice to see him as the specialist will be the best person to judge how far his diabetic condition has deteriorated since his detention (para 27 of encl 4) and he also states that from his experience with the doctors in Taiping General Hospital he does not have much confidence in them. This is because he alleged that although he received medication in that hospital be was still not given diabetic meals. The doctors in the hospital told him about minimal damage to his heart but did not take any immediate action. He believes he should have been sent to IJN immediately. He also got a distinct impression that the Taiping doctors were pressured to discharge him early on 9 April 2008 even though his condition had not stabilised (para 28).

[8] Therefore from his affidavit above, it is clear that he prays to be set free or released from Kamunting or alternatively, as stated in paras 27 and 28, to

A be admitted to IJN immediately to seek treatment for his diabetes and heart condition.

PRELIMINARY OBJECTION

B **[9]** On receiving this application, the senior federal counsel of the Home Ministry, En Abdul Wahab bin Mohammad wrote a letter to court (letter dated 12 June 2008) with a copy sent to the applicant's counsel giving notice that he will raise a preliminary objection on this matter. His objection was that the grounds forwarded by the applicant in his application could not C come within the legal ambit of an application for a writ of habeas corpus as the deprivation or otherwise of any medical treatment or proper diet had no nexus with the legality of the detention of the applicant. He submitted that the writ of habeas corpus is not an available remedy in such a situation and that the applicant has to seek other recourse ie by way of a writ of mandamus. D Learned counsel for the applicant, Ms Chew Swee Yoke, in reply pointed out that the modern development of the law in habeas corpus as seen in Canada based on legal provisions similar to ours, showed that the writ of habeas corpus is no longer restricted merely to questioning the validity of the initial detention but extend to any form of confinement which has become E unlawful. She set out that in Canada the writ of habeas corpus can be used to challenge 3 different deprivations of liberty:

(a) initial deprivation;

(b) substantial change in detention conditions;

F

(c) continuation of deprivation of liberty.

[10] And in our present case, she is inviting this court to adopt the practice in Canadian courts to allow the remedy of the writ of habeas corpus to free G a detainee from legal detention when conditions of detention has become inhumane and unlawful and not confine or limit the usage of the writ only to the initial detention based on mere non-compliance to procedural requirements of the detaining Act. In essence she is asking this court to evolve the law of habeas corpus to a stage where it is no longer just for questioning H the initial detention of an individual but also questioning the legality of conditions of detention of a detainee or prisoner since she contends the substantial change in conditions of detention amounts to a further deprivation of liberty.

I **[11]** Therefore from the onset of this application, learned counsel for the applicant, Miss Chew Swee Yoke has informed this court that she is not challenging the legality of the initial detention of Mr Uthayakumar but instead is challenging the conditions of detention. In other words she is saying that the originally legal detention has been rendered unlawful due to

the inhumane conditions of detention ie the deprivation of medical treatment and proper diet.

THE LAW

[12] The question thus arose whether the Canadian position is applicable here.

[13] The application for the issue of a writ of habeas corpus is made under s 365 of the Criminal Procedure Code ('CPC'). Section 365 which comes under Chapter XXXVI read as follows:

> CHAPTER XXXVI DIRECTIONS OF THE NATURE OF A HABEAS CORPUS
>
> The High Court may whenever it thinks fit direct —
>
> 365 Power of High Court to make certain order.
>
> (1) that any person who —
>
> (a) is detained in any prison within the limits of the Federation on warrant of extradition whether under the Extradition Ordinance, 1958, or the Commonwealth Fugitive Criminals Act, 1967; or
>
> (b) *is alleged to be illegally or improperly detained in public or private custody within the limits of the Federation,*
>
> be set at liberty;
>
> (2) that any defendant in custody undera writ of attachment be brought before the Court to be dealt with according to law.

[14] Apart from s 365, art 5(1) and (2) of the Federal Constitution provides that:

> Liberty of the person
>
> 5(1) No person shall be deprived of his life or personal liberty save in accordance with law.
>
> (2) *Where complaint is made to a High Court or any judge thereof that a person is being unlawfully detained the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and release him.*

[15] Under both s 365 and art 5, the court can only set at liberty or release a person from detention if the detention is 'illegal or improper' or 'unlawful'

respectively. In no other circumstances, once the initial detention is considered legal, lawful or proper, can the court interfere and issue a writ of habeas corpus to set a detained person free.

[16] When, then can the court interfere? In *Lee Kew Sang v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] 3 CLJ 914 the Federal Court expounded that the court can only interfere when there is non-compliance to procedural requirements. Abdul Hamid Mohamad FCJ (as His Lordship then was) stated at p 930 that:

> In our view, courts must give effect to the amendments. That being the law, it is the duty of the courts to apply them. *So in a habeas corpus application* where the detention order of the Minister made under s 4(1) of the Ordinance or, for that matter, the equivalent sections in ISA 1960 and DD(SPM) Act 1985, *the first thing that the courts should do is to see whether the ground forwarded is one which falls within the meaning of procedural non-compliance or not.* To determine the question, the courts should look at the provisions of the law or the rules that lay down the procedural requirements. It is not for the courts to create procedural requirements because it is not the function of the courts to make law or rules. If there is no such procedural requirement then there cannot be non-compliance thereof and only then the courts should consider whether, on the facts, there has been non-compliance.

[17] A number of cases have also decided on this point. In *Kerajaan Malaysia & Ors v Nasharuddin Nasir* [2004] 1 CLJ 81, the Federal Court held that the remedy of habeas corpus is essentially to facilitate the release of a person detained unlawfully. His Lordship Steve Shim CJ (Sabah and Sarawak) observed that:

> *It is a trite law that the remedy of habeas corpus is intended to facilitate the release of persons actually in unlawful custody and it is the fact of detention and nothing else which gives the court its jurisdiction* (see *Barnado v Ford* [1982] AC 326). The observation made by Choor Singh J in *Re Onkar Shrian* [1970] 1 MLJ 28 is particularly instructive. He said: Where the personal freedom of an individual is wrongly interfered with by another, the release of the former from illegal detention may be effected by habeas corpus. *The illegal detention of a subject, that is a detention or imprisonment which is incapable of legal justification, is the basis of jurisdiction in habeas corpus.*

[18] The issue on proposing extraneous considerations before the court to support an application for habeas corpus was further explained in the case of *Sejahratul Dursina @ Chomel bte Abdullah v Kerajaan Malaysia & Ors* [2006] 1 MLJ 405 where His Lordship Abdul Hamid Mohamad FCJ (as His Lordship then was) reiterated at p 412 that:

> Secondly what is more important is that the only remedy that can be applied for under art 5(2) of the Constitution and s 365 of the CPC is habeas corpus and nothing else. Of course, *the appellant has put in other prayers, for an order for access to be given to the appellant's solicitors to meet her and for an order that the appellant, after being released, shall not be arrested or detained again. The fact that the appellant has also put in those prayers does not change the law.* Instead, those prayers are contrary to the law in an application for habeas corpus. *In a habeas corpus application, the court has no jurisdiction under art 5(2) of the Constitution and s 365 of the CPC to make those other orders. The remedy may lie somewhere else.*

[19] It is also pertinent to note that even on the ground that the applicant had been denied legal access to his counsel could not form a basis for habeas corpus as held by the Federal Court in the case of *Mohamad Ezam bin Mohd Noor v Ketua Polis Negara and other appeals* [2002] 4 MLJ 449 where Her Ladyship Siti Norma Yaacob FCJ (as Her Ladyship then was) had an opportunity to consider whether the remedy of habeas corpus was available to the applicant for a breach of the second limb of arts 5(3) and 149 of the Federal Constitution. It was explained at p 516 that:

> The ISA makes no provision for denial of access to legal representation which would be inconsistent with art 5(3). As such, the ISA is still subject to the rights entrenched in art 5(3) and art 149 cannot be used to remove such right. Can habeas corpus lie to secure the immediate release of the applicants? I answer this by referring to some authorities. In *Lee Mau Seng*, it was held that *such a remedy is not available to persons like the appellants who after their arrests and underlawful detentions were refused their constitutional right under the second limb of art 5(3). Ooi Ah Phua* followed *Lee Mau Seng* and habeas corpus was refused on the ground that it is possible for a person to be lawfully detained and unlawfully denied communication with his lawyer. Likewise, in refusing to free an arrested person in police custody in the Indian case of *Sundar Singh v Emperor* AIR 1930 Lahore 945, Bhide J had this to say: It was argued by his counsel that the police custody became improper as the police refused to allow even the prisoner's legal adviser to have access to him. This is somewhat a debatable point, and although I have come to the conclusion that the police were not justified in refusing the prisoner to be interviewed by his legal adviser, I think, this cannot by itself be considered to be sufficient ground for setting him at liberty at once in the circumstances of the case.

[20] And at p 517, Her Ladyship further reiterated that:

> The rationale for refusing habeas corpus in the three cases that I have cited seems to be this. *A complaint by a person while under lawful detention that he has been refused access to counsel contrary to the second limb of art 5(3) will not have the effect of rendering his detention unlawful and that habeas corpus is not a proper remedy. It would be otherwise, for example, if there has been failure to inform the person arrested on the grounds of his arrest, contrary to the first limb of art 5(3) and such failure would render his subsequent detention unlawful. Clearly, it is the legal status of the detention*

that determines whether habeas corpus can issue to secure the freedom of a detained person as guaranteed by art 5(2) of our Constitution.

CONCLUSION

[21] Therefore from the cases cited above it is explicit that the Malaysian position on the issuance of a writ of habeas corpus is limited to and confined only to the legal status of the detention. Once the legal status of the initial detention is considered 'legal, lawful or proper', the remedy of habeas corpus is not available to an individual on whatever grounds put forth by him whether it is a complaint of a denial of legal access to his solicitor or in this instant case, the denial of proper medication and diet. As stated earlier in *Nasharuddin Nasir*, 'the remedy of habeas corpus is intended to facilitate the release of persons actually in unlawful custody and it is the fact of detention and nothing else which gives the court its jurisdiction'.

[22] In our instant case, the initial detention of Mr Uthayakumar was held to be legal by the said High Court (High Court 5, Kuala Lumpur) and upheld by both the Court of Appeal and Federal Court. Under s 365 of the CPC and art 5 of the Federal Constitution a court has jurisdiction to order a writ of habeas corpus to release a detainee only if the initial detention is held to be illegal, improper or unlawful respectively. In no other circumstances can the court interfere. Once the detention is considered legal, whatever transpired after that is beyond the jurisdiction of the High Court as far as the issuance of a writ of habeas corpus is concerned. In fact it would be contrary to the law in an application for a writ of habeas corpus to entertain the prayers set forth by Mr Uthayakumar. The remedy, if one is to challenge the conditions of detention, as suggested by His Lordship Abdul Hamid FCJ, (as His Lordship then was) in *Sejahratul Dursina* 'may lie somewhere else'.

[23] In this context, the Canadian position allowing the remedy of a writ of habeas corpus to challenge the conditions of detention is not applicable here in Malaysia. The preliminary objection raised by the SFC that the remedy of habeas corpus is not available to a detainee who complains of a denial of proper medication and diet ie conditions of detention is thereby allowed.

[24] Under the circumstances, a writ of habeas corpus cannot be issued to secure the release of the detainee, Mr Uthayakumar from legal detention. The application is therefore, accordingly dismissed.

WHETHER COMPLAINTS OF DEPRIVATION OF PROPER MEDICATION AND DIET AND DEPLORABLE CONDITIONS OF DETENTION HAS ANY MERITS

[25] Be as it may, though this court has decided to allow the preliminary

objection and finds that the remedy of a writ of habeas corpus is not available to Mr Uthayakumar, it would like to look into the merits of his complaints. In his application, the applicant has filed seven affidavits and the respondents, 72 affidavits (altogether 79 affidavits).

[26] The notice of motion of the applicant was dated 22 May 2008 (encl 3) with its affidavit in support by Mr Uthayakumar (encl 4). The other affidavits of the applicant are encls 29, 70, 73, 98, 102 and 103. The respondents filed 72 affidavits which are found in encls 7–27, 32–60, 64, 65, 76–87, 89–95 and 100.

[27] Perusing through the applicant's affidavits, the main complaints of Mr Uthayakumar can be divided into three major complaints; which are as follows:

(a) the applicant claimed that he was denied of his diabetic medication by the Kamunting Camp officials;

(b) the applicant claimed that he was denied proper medical treatment by the Kamunting Camp and Taiping Hospital officials. As such the applicant's health had deteriorated and apart from the illnesses he had before detention, he now suffers several other additional illnesses, ie heart illness, arthritis, skin disease ring worm, eye blurring and hypertension;

(c) lastly the applicant claimed that he was refused a diabetic diet by the Kamunting Camp and Taiping Hospital officials.

(a) *Denial of diabetic medication by Kamunting Camp officials*

[28] In his affidavit in support dated 21 May 2008, the applicant averred that he was a diabetic patient since 1996 and his doctor had prescribed him with daily medication of glucophage 500mg and diamicron 80mg.

[29] The applicant claimed that in the early stage of his detention, he was allowed to be supplied with medication from his family but the camp authority later disallowed it. The diabetic medication supplied by his family is glucophage and diamicron. When these medication ran out of supply in mid February 2008 the applicant then asked for the medication supplied by Taiping Hospital but was denied by the camp authority despite repeated demands. As a result of the denial, the blood sugar level of the applicant had at one point in time increased to 18.8mmol/l.

[30] What is claimed by the applicant, is denied by the respondents. The

affidavits affirmed on behalf of the respondents showed that on several occasions throughout the applicant's detention, his diabetic medication were sufficiently supplied to him.

[31] According to the respondent's affidavit, the applicant was put under detention in Kamunting from 13 December 2008. On 21 December 2008, a medical examination was conducted on the applicant by Dr Amutha a/p V Balu. Dr Amutha confirmed that the applicant suffers from diabetes and she prescribed the applicant with diabetic medication of glucophage and diamicron. Glucophage is the original trade name for metformin and diamicron is the original trade name for gliciazide. Therefore the content of both medication is metformin and gliciazide respectively. Since the pharmacy department of Taiping Hospital did not have glucophage and diamicron which is actually referred to by their brand names, they then supplied the applicant with metformin and gliciazide which are the same medication as glucophage and diamicron.

[32] Paragraph 5 of the affidavit of Dr Amutha a/p V Balu dated 10 June 2008 stated this:

> Hasil pemeriksaan saya selanjutnya, saya dapati Pemohon mengidap penyakit diabetis dan saya telah membekalkan Pemohon dengan ubat glucophage dan diamicron. Walau bagaimanapun pihak farmasi hospital kebiasaannya akan membekalkan ubat-ubatan yang bersamaan dengan yang saya nyatakan iaitu metformin bagi glucophage dan gliciazide bagi diamicron.

[33] The similarity of both glucophage/metformin and diamicron/gliclazide as stated by Dr Amutha is supported by Dr GR Letchuman a/l Ramanathan who is the senior physician at Taiping Hospital.

[34] Paragraph 8 of the affidavit of Dr GR Letchuman a/l Ramanathan dated 10 June 2008 stated this:

> Sebelum pemohon dibenarkan keluar dari hospital, pada jam lebih kurang 4.00 petang pada hari yang sama, Warden Penjara Shahrom bin Hussain dari tempat tahanan tersebut telah berjumpa dengan saya memaklumkan bahawa pemohon pada awalnya telah diberikan ubat-ubatan yang dibekalkan oleh keluarganya. Walau bagaimanapun, pembantu perubatan telah memutuskan untuk memberikan kepada pemohon gliclazide yang merupakan ubatan yang sama dengan diamicron yang diambil oleh pemohon. Pemohon dikatakan enggan mengambil ubat gliclazide tersebut kerana mendakwa ia tidak sama dengan ubatan biasa yang diambilnya iaitu diamicron. *Pemohon juga dikatakan enggan untuk mendengar penjelasan bahawa kedua-dua ubatan ini iaitu diamicron dan gliclazide adalah sama. Diamicron adalah nama dagang yang asal ('original trade name') untuk gliclazide. Oleh itu kandungan di dalam kedua-dua ubat-ubatan tersebut iaitu*

gliclazide dan diamicron adalah sama iaitu gliclazide. Warden penjara tersebut meminta saya untuk menerangkan kepada pemohon mengenai perkara ini.

[35] Paragraph 5 of the affidavit of Dr GR Letchuman a/k Ramanathan dated 4 July 2008 referred to this:

Para 5

Ubatan-ubatan hospital yang dibekalkan kepada pemohon iaitu gliclazide dan metformin adalah ubat-ubatan sama seperti diamicron dan glucophage. Saya sesungguhnya menyatakan bahawa diamicron adalah nama dagang (trade name) bagi gliclazide. Nama generic untuk diamicron adalah gliclazide. Glucophage pula adalah nama dagang (trade name) untuk metformin. Nama generic untuk glucophage adalah metformin.

[36] The medication prescribed by Dr Amutha were then collected by camp warden Mohd Shahrom bin Hussain who later gave them to Inspector Mohd Saleh bin Hussin to be given to the applicant at the detention camp. Inspector Mohd Saleh then informed the applicant that the medication will be kept at the applicant's safe box at his block and the applicant can take the medication when required.

[37] Paragraph 5 of the affidavit of Prison Warden Mohd Shahrom bin Hussain dated 19 June 2008 referred to this:

Para 5

Saya sesungguhnya ingin menyatakan bahawa pada 21 Disember 2007 jam lebih kurang 11.30 pagi, saya telah membawa pemohon berjumpa dengan Doktor Amutha a/p Balu di Jabatan Pesakit Luar, Hospital Taiping Perak untuk menjalani pemeriksaan doktor untuk orang tahanan (ISA) yang baru dibawa masuk. Selepas pemohon menjalani pemeriksaan, doktor Amutha a/p Balu telah memberi slip ubatan-ubatan kepada saya untuk diambil di farmasi Hospital iaitu ubatan-ubatan diamicron (gliclazide) dan glucophage (metformin) untuk dibekalkan kepada pemohon. Saya telah mengambil slip ubatan-ubatan tersebut dan telah mengambil ubat-ubatan tersebut dari Farmasi Hospital dan membawa ke tempat tahanan tersebut. Di tempat tahanan tersebut pada jam lebih kurang 1.30 petang, saya telah menyerahkan ubat-ubatan itu kepada Inspektor Penjara Mohd Saleh bin Hussin untuk dibekalkan kepada pemohon di Blok tempat tahanan pemohon.

[38] Paragraph 5 of the affidavit of Prison Inspector Mohd Saleh bin Hussin dated 19 June 2008 referred to this:

Para 5

Saya sesungguhnya menyatakan bahawa pada 21 Disember 2008 saya telah menerima ubat-ubatan gliclazide dan metformin yang dibekalkan oleh Hospital Taiping daripada Warden Penjara Shahrom bin Hussain untuk dibekalkan kepada

pemohon di blok tahanan pemohon. Saya telah mengambil ubat-ubatan tersebut dan telah memaklumkan kepada pemohon bahawa ubat-ubatan tersebut saya simpan di peti simpanan pemohon di bilik tahanan tersebut untuk diambil oleh pemohon apabila perlu.

[39] On 3 January 2008, the applicant was allowed by Dr Subramaniam a/l R Veelian to receive the medication supplied by his lawyer and family on 14 and 29 December 2008 respectively. The medication were oralmet (metformin) — 1–6 tabs, tussidex forte linctus-90ml, glucophage 500mg — 9 tabs, diamicron (gliclazide), bio-zinc complex (zn+vite), cod liver oil 500mg-caps and B10 sustain (Vitc). The medication that relates to diabetes are oralmet, glucophage and diamicron (gliclazide). Dr Subramaniam had instructed Inspector Mohd Saleh bin Hussain to give these medication to the applicant at his block. Nevertheless the applicant refused to accept the medication as he still has some of the medication previously supplied with him. Inspector Mohd Saleh then informed him that the medication will be kept at the applicant's safe box at his block and the applicant can take the medication when required.

[40] Paragraphs 6 of the affidavits of Dr Subramaniam a/l R Veelian dated 11 June 2008 and Prison Inspector Mohd Saleh bin Hussin dated 19 June 2008 averred to this.

[41] On 24 January 2008, the applicant was admitted to Taiping Hospital due to some abdominal pain as a result of a hunger strike. Upon discharge on 29 January 2008, the doctors from Taiping Hospital prescribed him with metformin, gliclazide and lovastatin. These medication were then collected by Warden Mohd Shahrom bin Hussain who later gave them to SM Hussin bin Yahaya to be given to the applicant at his block. Nevertheless the applicant refused to accept the medication as he still has some of the medication previously supplied by his family. SM Hussin then informed him that the medication will be kept at the applicant's safe box at his block and the applicant can take the medication when requirred.

[42] Paragraphs 8 and 9 of the affidavit of Prison Warden Mohd Shahrom bin Hussain dated 19 June 2008 averred to this:

Para 8

Saya telah berjumpa dengan pemohon di blok tahanan pemohon serta memaklumkan kepada pemohon bahawa ubat-ubatan tersebut dibekalkan oleh Hospital Taiping untuk pemohon. Walau bagaimanapun pemohon enggan menerima ubat-ubatan tersebut atas alasan ubat-ubatan yang terdahulu masih ada lagi. Maka saya memaklumkan kepada pemohon bahawa ubat-ubatan tersebut saya simpan di peti simpanan pemohon di bilik tahanan tersebut dan boleh diambil oleh pemohon apabila perlu.

[43] On 6 February 2008, the applicant was referred to the outpatient department at Hospital Taiping. He was examined by Dr Norizmaliza bt Mohd Nazri who then prescribed him with metformin and diamicron. These medication were then collected by Warden Mohd Shahrom bin Hussain who then gave them to Prison Warden Zainal Abidin bin Sarid at the applicant's block. Prison Warden Zainal Abidin then gave the medication to SM Hussin bin Yahaya to be given to the applicant. Nevertheless the applicant refused to accept the medication as he still has some of the medication previously supplied with him. SM Hussin then informed him that the medication will be kept at the applicant's safe box at his block and the applicant can take the medication when required.

[44] Paragraph 5 of the affidavit of Dr Norismaliza bt Mohd Nazri dated 2 July 2008 averred to this:

> Para 5
>
> Saya sesungguhnya menyatakan bahawa pada 6th February 2008, pemohon telah dibawa ke Klinik Kesihatan Taiping untuk mengambil darah sahaja. Walau bagaimanapun atas permintaan pemohon, dia telah dirujuk kepada saya untuk tujuan untuk mengetahui keputusan ujian darah yang diambilnya pada hari itu. Bacaan tekanan darah pemohon yang saya lakukan memberikan bacaan 130/80 iaitu bacaan yang normal. Pemohon juga tidak menunjukkan sebarang symptom-symptom yang lain atau asymptomatic. Ujian random yang dilakukan ke atas darah pemohon memberikan bacaan 6.5 mmol/l iaitu bacaan yang normal. Saya telah mempriskripsikan ubat-ubatan metformin dan gliclazide.

[45] Paragraph 10 of the affidavit of Prison Warden Mohd Shahrom bin Hussain dated 19 June 2008, para 5 of the affidavit of Prison Warden Zainal Abidin bin Sarid dated 19 June 2008 and para 6 of the affidavit of SM Hussin bin Yahaya dated 19 June 2008 attested to this.

[46] On 3 March 2008, the applicant was again referred to Klinik Kesihatan Bandar Taiping for follow up treatment. He was examined by Dr Marliana bt Abd Rahim who then prescribed the applicant with metformin and diamicron. These medication were then collected by Prison Warden Mohd Shahrom bin Hussain who gave them to the medical assistant, Harpajan Singh a/l Beer Singh at the detention camp. On the following day, 4 March 2008, Harpajan Singh gave the medication to Prison Warden Zainal Abidin bin Sarid who later gave them to Corporal Aris bin Abdul Sani to be given to the applicant at his block. *Nevertheless the applicant again refused to accept the medication as he still has some of the medication previously supplied by his family.* Corporal Aris bin Abdul Sani then informed him that the medication will be kept at the applicant's safe box at his block and the applicant can take the medication when required.

[47] Paragraph 5 of the affidavit of Dr Marliana bt Abd Rahim dated 2 July 2008 stated this:

Para 5

Saya sesungguhnya menyatakan bahawa pada 3 Mac 2008, pemohon telah dirujuk kepada saya di ke Klinik Kesihatan Taiping untuk menjalani rawatan susulan diabetes. Dalam pemeriksaan tersebut, saya mendapati bacaan paras gula dalam darah pemohon semasa berpuasa (FBS) adalah 6.2 mmol/l iaitu bacaan yang normal. Paras gula dalam darah yang diambil secara random adalah 7.0 mmol/l yang juga adalah bacaan yang normal. Saya telah mempreskripsikan pemohon untuk mengambil ubat-ubatan metformin dan diamicron.

[48] Paragraph 11 of the affidavit of Prison Warden Mohd Shahrom bin Hussain dated 19 June 2008, para 6 of the affidavit of medical assistant Harpajan Singh a/l Beer Singh dated 5 June 2008, para 6 of the affidavit of Prison Warden Zainal Abidin bin Sarid dated 19 June 2008 and para 5 of the affidavit Corporal Aris bin Abdul Sani dated 19 June 2008 all attested that the medication were collected from the clinic and kept in the safe box. Since the applicant refused to accept the medication since he still has his old supply, Corporal Aris then informed him that the medication will be kept at the applicant's safe box at his block and the applicant can take the medication when required.

[49] Paragraph 5 of the affidavit of Corporal Aris bin Abdul Sani dated 19 June 2008 stated this:

Para 5

Saya sesungguhnya menyatakan bahawa pada 4 Mac 2008 saya telah menerima ubat-ubatan gliclazide (diamicron) dan metformin yang dibekalkan oleh Hospital Taiping daripada Warden Penjara Zainal bin Sarid untuk dibekalkan kepada pemohon di blok tahanan pemohon. Saya telah mengambil ubat-ubatan tersebut dan telah berjumpa dengan pemohon di blok tahanan pemohon serta memaklumkan kepada pemohon bahawa ubat-ubatan tersebut dibekalkan oleh Hospital Taiping untuk pemohon. Walau bagaimanapun pemohon enggan menerima ubat-ubatan tersebut atas alasan ubat-ubatan yang terdahulu masih ada lagi. Maka saya memaklumkan kepada pemohon bahawa ubat-ubatan tersebut saya simpan di peti simpanan pemohon di blok tahanan tersebut untuk diambil oleh pemohon apabila perlu.

[50] On 13 March 2008, counsel for the applicant tried to deliver diabetic medication from the family but was rejected as there was sufficient medication supplied by Klinik Kesihatan Taiping on 3 March 2008. Nevertheless the applicant refused to take the medication supplied by the government clinic. Harpajan Singh the medical assistant at the detention

camp clinic tried to explain to him on the medication provided by the government clinic but the applicant refused to listen. An inspection conducted at the safe box at the applicant's block on 9 April 2008 revealed that almost all the medication supplied by the government hospital was not taken by the applicant. Apart from the medication supplied by the government hospital, there were also medication supplied by his family found in the said box.

[51] Paragraphs 19, 20 and 21 of the affidavit of Yasuhimi bin Yusoff dated 19 June 2008 averred to this fact.

[52] Paragraph 21 of Yasuhimi's affidavit:

> Pada 18 Mac 2008, pembantu perubatan tempat tahanan tersebut iaitu Encik Harpajan Singh telah cuba memberi penerangan tetapi pemohon enggan atau telah mengabaikan penerangan yang diberikan. Selanjutnya pada lebih 9 April 2008 lebih kurang jam 10 pagi, pemeriksaan dijalankan di peti simpanan pemohon di blok tahanan pemohon bagi mengesan ubat-ubatan yang telah dipreskripsikan oleh Hospital Taiping dan yang dibekal oleh keluarga pemohon dan *didapati hampir ke semua ubat-ubatan preskripsi Hospital Taiping tidak dimakan oleh pemohon manakala terdapat sejumlah kuantiti ubat-ubatan lain yang dibekalkan oleh keluarga pemohon berada dalam blok tempat tahanan pemohon.*

[53] Also paragraphs 8 and 9 of the affidavit of Harpajan Singh a/l Beer Singh dated 5 June 2008 averred to this fact:

> Para 8
>
> Selanjutnya pada 18 Mac 2008, jam lebih kurang 3.15 petang pemohon telah dibawa berjumpa dengan saya oleh ASP Hambali di Klinik tempat tahanan tersebut berkaitan pemohon telah enggan untuk mengambil atau makan ubat yang dibekalkan oleh Hospital Taiping. Saya telah memberi penerangan kepada pemohon bahawa ubat dari Hospital Taiping telah dibekalkan kepada pemohon pada 4 Mac 2008 dan menasihatkan pemohon untuk mengambil ubat sebagaimana yang telah dipreskripsikan oleh pegawai perubatan Hospital Taiping tetapi *pemohon enggan mendengar penjelasan penerangan tersebut dan terus keluar dari klinik tempat tahanan tersebut.*

[54] On 7 April 2008, the applicant was again warded at the Taiping Hospital due to an increase in his blood sugar level. At the hospital the applicant was given glucovance which is a combination drug of metformin and gliclazide. Upon discharge on 9 April 2008 the applicant once again was prescribed with metformin and gliclazide. Before his discharge, Prison Warden Mohd Shahrom bin Hussain requested Dr GR Letchuman, the senior physician at Taiping Hospital to explain to the applicant on the

A medication prescribed by the hospital. The applicant agreed with the explanation given but on the following day, 10 April 2008, the camp authority informed Dr GR Letchuman that the applicant again refused to take the medication supplied. Dr GR Letchuman then requested Dr Lim Chong Hong to go to the detention camp to re-explain the matter. The B applicant informed Dr Lim that he preferred to be given glucovance and arrangement was made for him to be given glucovance on the same day itself. The medication was collected by Prison Warden Mohd Shahrom and given to Inspector Mohammed Tarmizi bin Kamaruddin to be given to the applicant at his block.

C

[55] Paragraphs 8, 9 and 12 of the affidavit of Dr GR Letchuman a/l Ramanathan dated 10 June 2008 averred to this fact.

D **[56]** On 15 April 2008, the applicant's family supplied diamicron (gliclazide) and oralmet (metformin). The medication were received by Prison Warden Zainal Abdidin and given to medical assistant Harpajan Singh. This time Harpajan Singh allowed the applicant to take the medication supplied by his family.

E

[57] From the affidavits above, it is very clear that the applicant was never denied his diabetic medication. He was prescribed by Dr Amutha as early as 21 December 2007 of his diabetic medication of glucophage and diamicron but since these two medication were not available at the pharmacy F department of Taiping Hospital, similar medication were given instead that is metformin and gliclazide. Dr GR Letchuman explained to him that these medication were similar, that glucophage is the trade name for metformin and diamicron is the trade name for gliclazide but the applicant still refused to accept the explanation. Since he still has his own supply of glucophage and G diamicron from his family, he carried on taking them until mid February 2008, when he ran out of supply. In the meantime the medication of metformin and gliclazide was collected by the Kamunting officials, each time the applicant was prescribed with these medication by the Taiping Hospital and were put into a safe box at the applicant's block to be given to him upon H request. Therefore from mid-February till 10 April 2008 when the applicant alleged he was without diabetic medication, it was due to his refusal to take those medication prescribed by Taiping hospital on the pretext that they were not the same or similar to the ones supplied by his family.

I **[58]** On 10 April 2008, after much explanation and persuasion from Dr GR Letchuman and Dr Lim Choong Hong, the applicant complied and started taking the medication supplied by the Taiping Hospital. This admission is found at paras 113 and 168 of the application's affidavit dated 18 July 2008 (encl 70).

Para 113

Menjawab perenggan 10, saya hanya bersetuju yang selepas pada 10 April 2008 sehingga ke tarikh di sini *saya diberikan ubat-ubat glucophage dan lovastatin saya tanpa sebarang masalah lagi.*

Para 168

Menjawab perenggan 12, saya mengulangi yang ubat yang diberikan telah tidak dilabelkan dan setelah berbincang dengan Dr Lim Chong Hong saya telah bersetuju menyambung dengan ubat glucovance dengan syarat saya dirawat seterusnya oleh seorang doktor pakar diabetes. Saya juga mengulangi di sini bahawa *selepas daripada tarikh 10 April 2008 isu pihak responden tidak lagi memberikan ubat diabetes dan lovastatin kepada saya tidak timbul.*

[59] Thus as at 10 April 2008, the denial of diabetic medication is no longer an issue since the applicant had resigned himself into taking the diabetic medication supplied by Taiping Hospital. Miss Chew Swee Yoke submitted that the attestation by Dr Amutha and Dr GR Letchuman that the medication metformin and gliclazide are similar to glucophage and diamicron cannot be accepted and this court requires an affidavit by a pharmacist for that purpose. I think that is carrying it too far. Dr Amutha and Dr GR Letchuman are qualified doctors and being professionals they have taken the oath to tell the truth. I accept their professional opinions on this matter.

[60] From the affidavits, one can also see that the applicant was seen by a number of doctors from Taiping Hospital and Klinik Kesihatan Bandar Taiping. Dr Amutha from Taiping Hospital saw the applicant on 21 December 2008 and prescribed him the diabetic medication. He was admitted into Taiping Hospital on 24 January 2008 due to his hunger strike and was seen by Dr GR Letchuman. On 6 February 2008, Dr Norismaliza bt Mohd Nazri also from Taiping Hospital saw the applicant and found his blood pressure to be normal. Then on 3 March 2008 the applicant was seen by Dr Marliana bt Abd Rahim from Klinik Kesihatan Bandar Taiping and she found the applicant's sugar level to be normal. On 7 April 2008 the applicant was warded into Taiping Hospital and was seen by Dr GR Letchuman and Dr Lim Chong Hong and again medication was prescribed.

[61] Therefore the claim by the applicant has no merits. This is so because not only was he seen by many doctors from Taiping Hospital and Klinik Kesihatan Taiping, but each time they saw him he was prescribed his diabetic medication which was collected by the camp officials and kept in the safe box at his block to be given him upon his request.

(b) *Denial of proper medical treatment by the camp authority and Taiping Hospital*

[62] In relation to his heart condition, the applicant claimed that he was denied of proper medical treatment by both the camp authority as well as Taiping Hospital. He alleged that:

(a) He was not informed of the minimal damage to his heart that was detected during the ECG test conducted in January 2008 ie during his admission to Taiping Hospital for the first time.

(b) Despite having problem with his heart, he was not referred to a cardiologist or Institut Jantung Negara (IJN) immediately despite being recommended to be so referred by Dr Leong Hui Shan. As a result, his heart problem had worsened.

(c) The applicant also claimed that his heart problem occurred while he was under detention.

(d) The applicant also claimed that the Taiping Hospital had been pressured by the camp authority and police special branch to discharge him prematurely during his admission to Taiping Hospital on January and April 2008.

[63] The minimal damage to the applicant's heart was first detected during an ECG test conducted in January 2008, ie during his first admission to Taiping Hospital. He was only informed of the result when Dr GR Letchuman met him at the detention camp on 22 April 2008. This was due to the fact that Dr GR Letchuman was not informed by the doctors who treated the applicant at that time as they were concentrating on complications arising from his hunger strike and not his heart. Be that as it may, it is important to note that there were no changes in his heart condition from January 2008 to April 2008. The ECG result taken in January 2008 and April 2008 are the same.

[64] Paragraph 16 of the affidavit of Dr GR Letchuman a/l Ramanathan dated 4 July 2008 attested to this:

Para 16

Merujuk kepada perenggan 28 afidavit tambahan pemohon saya mengakui bahawa saya tidak memberitahu pemohon mengenai ECGnya pada kali pertama pemohon dimasukkan ke wad pada bulan Januari 2008. Ini berlaku kerana doktor yang merawat pemohon tidak memberitahu saya keputusan ECG tersebut dan *tumpuan rawatan pemohon juga pada masa itu adalah terhadap masalah puasa dan komplikasinya dan bukan kepada masalah jantung pemohon. Walau bagaimanapun keadaan juntung pemohon pada kali kedua dia dimasukkan*

ke wad pada bulan April 2008 tidak menunjukkan sebarang perubahan kepada keadaan kesihatan jantung pemohon dan keputusan ECG bagi kedua-dua ujian pada bulan Januari dan April 2008 adalah sama.

[65] With regard to the treatment given for his heart problem, the applicant was recommended to take aspirin and ACE-Inhibitor to prevent him from suffering from heart attacks. The applicant refused to accept this suggestion as he wishes to get a second opinion from a cardiologist. Four appointments were then fixed by Taiping Hospital for him to see a cardiologist from Penang Hospital and National Heart Institute (IJN). The first appointment was fixed on 14 May 2008 with a visiting cardiologist from Penang Hospital. However, the said appointment was then re-scheduled for an early date on 6 May 2008 in Penang Hospital. Nevertheless, the applicant refused to attend the said appointment, instead, he asked to be referred to IJN.

[66] Immediately an appointment with IJN was arranged on the following day, 7 May 2008 but the applicant again refused to attend. Another appointment was arranged for the applicant to be referred to a cardiologist from Penang Hospital on 14 May 2008 but to no avail. Then, a second appointment with IJN was fixed on 22 May 2008. However, the applicant also refused to attend.

[67] Paragraphs 5, 6, 7, 8, 9 and 10 of the affidavit of Dr Leong Hui Shan dated 10 June 2008 attested to this.

Para 5

Hasil pemeriksaan, saya mendapati kandungan gula dalam darahnya adalah di tahap 5.1 mmol/l yang merupakan tahap yang normal. *Ujian ekokardiografi yang dijalankan menunjukkan terdapatnya kerosakan pada dinding jantungnya. Walau bagaimanapun pemohon tidak mengadu mengalami sakit dada atau menunjukkan kehilangan daya tahan. Pemohon masih dapat melakukan senaman selama satu jam setiap hari.*

Para 6

Seterusnya saya telah menasihatkan pemohon untuk mengambil ubat-ubatan aspirin dan Ace-Inhibitor sebagai tambahan kepada ubat-ubatan kolesterol dan anti-diabetes yang diambilnya. *Pemohon menyatakan mahu dirujuk ke pakar perubatan kardiologi bagi mendapatkan pandangan kedua sebelum mula mengambil ubat-ubatan yang dicadangkan.* Saya kemudiannya telah memaklumkan permintaan pemohon ini kepada Dr GR Letchuman a/l Ramanathan dan *temu janji kemudiannya dibuat dengan pakar perubatan kardiologi dari Hospital Pulau Pinang yang akan datang ke Hospital Taiping pada 14 Mei 2008.*

Para 8

Seterusnya pada 6 Mei 2008, saya telah dimaklumkan oleh Dr GR Letchuman a/l Ramanathan bahawa *pemohon enggan untuk pergi ke Hospital Pulau Pinang. Sebaliknya pemohon telah meminta untuk dihantar ke Institut Jantung Negara di Kuala Lumpur.* Dr GR Letchuman a/l Ramanathan seterusnya telah meminta saya untuk menyediakan surat rujukan pemohon ke Institut Jantung Negara. Saya telah difahamkan bahawa temu janji pemohon di Institut Jantung Negara yang mana telah ditetapkan pada 7 Mei 2008. ... *Saya dimaklumkan oleh Dr GR Letchuman a/l Ramanathan bahawa pemohon tidak menghadiri temu janji di Institut Jantung Negara ini.* Saya kemudiannya telah diarahkan untuk menetapkan temu janji pemohon dengan pakar kardiologi dari Hospital Pulau Pinang pada tarikh yang asal iaitu pada 14 Mei 2008. Namun demikian pemohon sekali lagi tidak menghadiri temu janji ini.

Para 9

Selanjutnya pada 20 Mei 2008 saya telah diminta sekali oleh Dr GR Letchuman a/l Ramanathan untuk menyediakan surat rujukan pemohon ke Institut Jantung Negara. Saya difahamkan *temu janji dengan Institut Jantung Negara ini telah ditetapkan pada 22 Mei 2008.*

Para 10

Merujuk kepada perenggan 18 afidavit sokongan pemohon, saya mengulangi pernyataan saya di perenggan 6 hingga 9 di atas dan saya menafikan ada mencadangkan supaya pemohon dimasukkan ke Institut Jantung Negara untuk rawatan kerosakan jantung pemohon. Sebaliknya saya menegaskan bahawa *rujukan ke Institut Jantung Negara hanya dibuat atas permintaan pemohon sendiri* ketika pemohon enggan untuk dibawa ke Hospital Pulau Pinang bagi berjumpa dengan pakar perubatan kardialogi di sana.

[68] Therefore it must be noted that the referral to a cardiologist as stated at para 10 above was done at the applicant's own request. His heart condition under the normal circumstances need not be referred to a cardiologist.

[69] At para 5 of the affidavit of Dr Leong Hui Shan dated 8 July 2008 he again reiterated this:

Para 5

... saya menegaskan bahawa rujukan pemohon ke Institut Jantung Negara adalah dibuat atas permintaan pemohon sendiri.

[70] At para 28 of the affidavit of Dr GR Letchuman a/l Ramanathan dated 10 June 2008:

Para 28

... Sebaliknya rujukan ke Institut Jantung Negara dibuat atas permintaan pemohon sendiri. Saya ingin menegaskan bahawa keadaan kesihatan jantung pemohon tidak membimbangkan yang memerlukan rawatan segera di Institut Jantung Negara. Ini kerana pemohon tidak menunjukkan sebarang symptom mengalami masalah jantung seperti sakit dada dan sebagainya. Sebaliknya pemohon masih boleh bersenam 1 ke 2 jam sehari semasa di tempat tahanan tersebut tanpa sebarang masalah. *Adalah sesuatu yang mengecewakan apabila pemohon telah enggan menghadiri walau satu pun dari 2 temu janji yang telah dibuat dengan Institut Jantung Negara dan 2 temu janji yang telah dibuat dengan pakar perubatan kardiologi Hospital Pulau Pinang.*

[71] The applicant's refusal to attend the said appointments is also supported by the affidavit of Yasuhimi bin Yusof dated 19 June 2008. Apart from the facts which were revealed by both the doctors, Yasuhimi bin Yusoff had also stated that the applicant refused to attend the said appointments. Instead the applicant had put pre-conditions for his admission to IJN such as being provided with a television and newspapers in his ward. In addition, he also requested that he be allowed to meet his counsel and family members in IJN for a duration of two hours each.

[72] At para 34 of the affidavit of Yasuhimi bin Yusoff dated 19 June 2008:

Para 34

... pihak Hospital Taiping telah berjaya memperolehi temu janji dengan Pakar Perubatan Kardiologi Datuk Dr Rosli dan Pakar Perubatan Kardiologi Dato' David Chew dari Institut Jantung Negara dengan pemohon pada 7 Mei 2008 dan 22 Mei 2008 di Institut Jantung Negara, Kuala Lumpur dan dengan Pakar Perubatan Kardilogi Hospital Pulau Pinang di Hospital Taiping pada 6 Mei 2008 dan 14 Mei 2008. *Malangnya pada semua temujanji-temujanji tersebut, pemohon enggan hadir,* sebaliknya memberi pelbagai alasan-alasan antaranya dengan meletakkan pra syarat kepada saya bagi menyediakan untuk pemohon kemudahan-kemudahan iaitu disediakan televisyen dan surat khabar dalam bilik semasa diwadkan di Institut Jantung Negara, masa untuk berjumpa keluarga selama 2 jam dan masa berjumpa dengan peguambela salama 2 jam sama ada siang atau malam ...

[73] From the above affidavits of Dr GR Letchuman, Dr Leong Hui Shan and Yasuhimi bin Yusoff, the claim by the applicant that he was not given proper treatment on his heart condition is baseless. When an ECG test was conducted in January 2008 and it was found that the applicant suffered some damage to the wall of his heart, and on the applicant's own request, immediate action was taken by the two doctors concerned. Two appointments were made for the applicant to see a visiting cardiologist from Penang Hospital but the applicant refused to attend these appointments and instead requested to be sent to IJN. When two appointments were made for

A the applicant to be sent to IJN, again the applicant refused to attend. It is to be noted that according to Dr GR Letchuman, the applicant's heart condition need not necessitate him being referred to IJN but he acceded to it since the applicant insisted on it. Yet, when the appointments were made by Dr GR Letchuman for the applicant to see two prominent heart specialists from IJN, B Datuk Dr Rosli and Dato' David Chew on 7 May 2008 and 22 May 2008 and logistic arrangements were made by Yasuhimi, the applicant again refused to attend.

C **[74]** On the claim that the applicant's heart problem occurred while he was under detention, there is no proof to substantiate that claim and it remains just an allegation.

D **[75]** In relation to the applicant's claim that he was discharged prematurely from Taiping Hospital, Dr GR Letchuman in his affidavit dated 10 June 2008 certified that the decision to discharge the applicant on January and April 2008 were purely clinical decisions and not due to any pressure from any authority.

E **[76]** As to his claim that he suffers from, among others, eye blurring, arthritis, skin disease, hypertension and high level of potassium as a result of being denied his medical treatment the affidavits of Dr Hazliza bt Hussin dated 2 July 2008; Dr GR Letchuman dated 10 June and 4 July 2008; Dr Amutha a/p V Balu dated 10 June 2008; Dr Mohan Raj a/l Sundram F dated 2 July 2008; Dr Agnes Heng Yoke Hui dated 8 July 2008; Dr Norismaliza bt Mohd Nazri, Dr Lim Chong Hong and Dr Nisha Sabrina Aloysious all dated 2nd July 2008, all attested that whatever diseases complained of by the applicant was carefully attended to and examined by the relevant doctors and specialists in their specialised field.

G **[77]** Dr Hazliza bt Hussin in her affidavit dated 2 July 2008 confirmed that the applicant did not suffer from blurring vision due to improper treatment of his disease. This fact is supported by Dr GR Letchuman a/l Ramanathan in his affidavit dated 10 June 2008.

H **[78]** On the allegation of pain on his back and leg and arthritis as a result of having to sleep on a thin mattress, this allegation is answered by Dr GR Letchuman in the same affidavit where his examination showed that it was caused by a sport injury as a result of the applicant's intensive exercise in the I detention center. This is later confirmed by Dr Mohan Raj a/l Sundram in his affidavit dated 2 July 2008.

[79] On the issue that he suffered from skin disease due to the deplorable condition of the detention camp, Dr Agnes Heng Yoke Hui in her affidavit dated 8 July 2008 confirmed that the applicant did have some skin problem on a few parts of his body but state that it did not endanger his life and it was not related to diabetes.

[80] Over the issue of high blood pressure as a result of the applicant's detention, the test conducted by Dr Amutha a/p V Balu as evident in her affidavit dated 10 June 2008 suggested that the applicant's blood pressure to be normal. This is supported by Dr Norismaliza bt Mohd Nazri in her affidavit dated 2 July 2008. Two other doctors namely Dr Nisha Sabrina Aloysious and Dr GR Letchuman also confirmed the findings of Dr Amutha as evident through their respective affidavits affirmed on 2 July 2008 and 4 July 2008.

[81] As to the allegation which touches on the issue of high level of potassium which the applicant alleged he suffered after his admission to the detention center, this was answered by Dr Lim Chong Hong where in his affidavit dated 2 July 2008 he confirmed that the potassium reading was normal. This is supported by Romel Shahfi bin Ahmad Tajuddin in his affidavit dated 2 July 2008.

[82] Therefore the claim that he was denied medical treatment by the camp authority as well as the Taiping Hospital is again baseless since the affidavits showed otherwise.

(c) *Denial of diabetic diet*

[83] The applicant claimed that he was denied a diabetic diet by the camp authority. The applicant claimed that the food in Kamunting which consist of rice and curry is sweet in nature and has aggravated his diabetic condition.

[84] From the affidavit of Dr Amutha dated 10 June 2008, she has recommended the Kamunting camp warden to refer the applicant to a dietician for proper food to be prescribed to him. This was done by the camp warden, Mohd Shahrom bin Hussain whereby on 26 December 2007, he went to the applicant to bring him and Kengadharan a/l Ramasamy (another detainee) to see the dietician, Farah Wahida bt Zainuddin (see Prison Warden Mohd Shahrom's affidavit dated 19 June 2008). The applicant refused to meet the dietician and only Kengadharan went to see the dietician. Farah Wahida's affidavit dated 10 June 2008 affirmed that only Kengadharan came to see her on 26 December 2007. She prescribed a diabetic diet for Kengadharan and informed Prison Warden Mohd Shahrom that the same diet be given to the applicant.

[85] At paras 8 and 9 of Farah Wahidah's affidavit dated 10 June 2008 she stated this:

Para 8

> Saya menegaskan bahawa nasihat yang saya berikan berkaitan menu yang disediakan oleh Pihak Penjara adalah berdasar kepada Buku Cadangan Skala Diet dan Menu untuk Banduan atau Tahanan atau Juvana, Jabatan Penjara Malaysia daripada Jawatankuasa Teknikal Skala Diet dan Menu Kementerian Kesihatan Malaysia, Mei 2001.

Para 9

> Saya ingin menegaskan di sini bahawa cadangan menu yang disediakan oleh pihak tempat tahanan tersebut adalah cadangan menu yang telah disediakan oleh pihak Kementerian Kesihatan Malaysia. *Walaupun menu tersebut merujuk kepada menu vegetarian, namun ia sesuai untuk pesakit diabetes.*

[86] Yasuhimi bin Yusof averred in his affidavit dated 19 June 2008 that the food prepared for the applicant in Kamunting was as recommended by Dr Amutha which is a diet consistent with that of a diabetic.

Para 45

> *... selepas Dr Amutha a/p V Balu memberi preskripsi bahawa diet pemakanan pemohon hendaklah ditukar dan disesuaikan dengan diet pemakanan sakit diabetis, saya telah melaksanakan preskripsi Dr Amutha a/p V Balu tersebut.* Saya sesungguhnya menyatakan secara tegas bahawa keadaan diabetis pemohon yang tidak stabil ketika berada dalam tahanan di tempat tahanan tersebut adalah berpunca daripada sikap pemohon sendiri iaitu pemakanan pemohon yang tidak selari dengan diet atau menu. *Pemohon juga dipercayai mengambil gula secara berlebihan kerana minum dan makanan yang disediakan oleh tempat tahanan tersebut adalah secara minuman yang kosong dan makanan yang tiada bergaram dengan gula dan garam diasingkan agar pemohon sendiri mengambil kadar gula dan kadar garam yang bersesuaian dengan keadaan diabetisnya dan keadaan tekanan darahnya.*

[87] Miss Chew however submitted that the diet given to the applicant is a vegetarian diet and not a diabetic diet. However, Farah Wahida, the dietician has stated in her affidavit dated 10 June 2008 at paras 8 and 9, that the diet prescribed by her to the applicant and Kengadharan is based on the *Buku Cadangan Skala Diet dan Menu untuk Banduan atau Tahanan atau Juvana, Jabatan Penjara Malaysia* which guide book was prepared by the technical committee of the Ministry of Health and she averred in para 9 that even though the said menu refers to a vegetarian menu it is nevertheless suitable for a diebetic patient.

[88] Yasuhimi attested that he has followed the instruction of Dr Amutha and has changed the diet of Mr Uthayakumar to one which is suitable to a diabetic patient. He averred that the food prepared at the detention centre has no sugar or salt added to it and it is up to each detainee to control their salt or sugar intake.

[89] Based on the dietician Farah Wahida's averment that the vegetarian menu prepared in Kamunting is suitable to a diabetic patient and based on Yasuhimi's affidavit that the food at the camp is prepared without salt or sugar added to it; in fact both Farah Wahida and Yasuhimi stated that the diet that was prepared for the applicant was consistent with the suggestion and followed the diet scale and menu as provided by the Prison Department and Health Ministry; this court is satisfied that all that can be done within the confines of the law, was done by the doctor, dietician and camp wardens to assist Mr Uthayakumar in getting his diabetic diet. As an experienced diabetic, it is now up to Mr Uthayakumar to exercise some form of control and restraint in his food intake to manage his sugar level. As such his claim that he was refused a diabetic diet is not maintainable under the circumstances.

[90] It is to be noted that in his notice of motion dated 21 May 2008, in encl 3, Mr Uthayakumar has prayed to be set free or released from Kamunting or in the alternative (his second prayer) as stated in paras 27 and 28 of his supporting affidavit, to be admitted to IJN immediately to seek treatment for his diabetes and heart condition.

[91] It is only later in his affidavit dated 30 July 2008 and in submission that he has a change of heart. He has now decided that he did not want to be treated at IJN and wants the court to substitute or replace his second prayer to one allowing him instead to seek treatment overseas from a medical practitioner of his own choice. His reasons are as stated in para 65 of his said affidavit.

[92] In para 65, the applicant says that he has now concluded that there is a pattern of falsification, confusion and obstruction which is very worrying to him. Because of that he has lost confidence that he will obtain medication which is independent and competent so long as his medical matters are under the control of the respondents. He believes that he has the absolute right to choose medical treatment most suitable for him and he has decided that he can only obtain such medical treatment overseas where the doctors will not be subjected to manipulation and pressure from the respondents or the authorities. It is not stated whether the treatment sought overseas is at the expense of the government or his own. Be as it may, this court finds the reasons given behind this change of heart very alarming. To say that he

A cannot trust any government doctors and doctors from IJN and that they are incompetent is an insult to their professionalism. It is to be noted that the applicant has never been denied his diabetic medication from either the Taiping Hospital nor the camp officials and his refusal to accept these diabetic medication prescribed by them was based on his stubborn refusal to accept
B the explanation that the medication supplied by them and the ones supplied by his family are similar. Again when the applicant complained of heart problem and requested to be sent to IJN immediately, Dr GR Letchuman acceded to his request even though the good doctor did not feel his condition merits him being referred to IJN. Despite two appointments being made to
C allow the applicant to be seen by two prominent heart specialists in IJN, the applicant, in the eleventh hour, changed his mind and refused to attend.

[93] This court feels that all these sudden change of heart and mind by the applicant at the eleventh hour showed that he is not serious in seeking
D medical treatment in IJN. The respondents, on the other hand, has, through their numerous affidavits shown that all medical attention has been showered upon the applicant and no complaints, be it a lack of medication or proper diet has been left IJN attended, in fact all complaints were thoroughly investigated, diagnosed and proper medication meted out by the respective
E doctors in their particular fields.

[94] In view of the above, this court is of the opinion that the claim by the applicant that he was deprived or denied of proper medication, treatment and proper diet by the Taiping Hospital and the Kamunting camp officials is not
F true and without merits whatsoever.

[95] Since this court has held that the remedy of a writ of habeas corpus is not available to the applicant to challenge the conditions of detention and since this court, too, has made a finding that there is no denial or deprivation
G of proper medication, treatment and proper diet by the respondents, the application by Mr Uthayakumar is therefore accordingly dismissed.

Applicant's application dismissed.

H

Reported by Andrew Christopher Simon

I